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**DRAFT FOURTH JUDICIAL DISTRICT GUIDELINES  
FOR THE PERFORMANCE OF DUTIES AS A  
GUARDIAN AD LITEM IN DOMESTIC RELATIONS CASES**

## INTRODUCTION

At any point in a domestic relations proceeding involving parenting of minor children, the Court may appoint a *guardian ad litem* (GAL) upon the motion of the parties or upon its own motion. The purpose of the Fourth Judicial District Guidelines for the Performance of Duties as a Guardian ad Litem in Domestic Relations Cases is to establish a minimum set of standards applicable to the appointment, responsibilities, and removal of GALs. These Guidelines apply to all district court domestic relations cases in which the court appoints a GAL to represent the best interest of a child with respect to the child's support, parenting, and parental contact.

The Guidelines are designed to improve the services provided by GALs to the Court and to ensure that GALs work diligently to protect the best interests of the children they are appointed to represent. These Guidelines are to be interpreted by application of the principle that the GAL is an agent of the Court and that a GAL does not act as a member of the Guardian's underlying profession, but rather as a judicial officer primarily subject to and governed by the Court.

Fourth Judicial District Judges and staff, members of the local bar, representatives of the University of Montana and community volunteers have contributed to these guidelines. In addition to state statutory requirements and specific Court Order, GALs appointed in the Fourth Judicial District are subject to the guidelines set forth below.

## I. DEFINITIONS

- A. For the purpose of these Guidelines, "**guardian ad litem**" (GAL) means any person or program appointed in a MCA Title 40-4-205(1) (Family Law Action) to "represent the best interests of a minor dependent child with respect to the child's support, parenting, and parental contact."
1. These Guidelines shall not be applicable to a GAL appointed pursuant MCA 41-3-112 in a Dependency and Neglect proceeding.
  2. A GAL shall not perform the following roles in a case in which the person is appointed to serve as a GAL:
    - a. Attorney appointed to represent the child;
    - b. Parenting/Custody Evaluator;
    - c. Therapist or Counselor; or
    - d. Mediator.
- B. "**Court**" means the Fourth Judicial District Court in Montana.
- C. "**Chief Judge**" means the Fourth Judicial District judge named Chief for a given year, beginning on January first, and rotating annually.

- D. **"Roster"** means a roster of approved guardians maintained by the Chief Judge of the Fourth Judicial District Court.

## II. RESPONSIBILITIES OF GAL

Pursuant to MCA Title 40-4-205(2), the GAL has the following general duties:

- A. **Investigations.** Within the scope of authority defined by statute and Court Order, the GAL shall plan, carry out, document, and complete thorough, appropriate, and fair investigations that the GAL considers necessary to ascertain the facts related to the child's support, parenting, and parental contact. Such investigations should include assessment of any physical, sexual, developmental, and/or emotional risks to or abuse of the child, including review of available risk assessment tools, evaluations, assessments, reports and medical records, and observation and interview of appropriate persons. For these purposes, MCA Title 40-4-205(3) grants the GAL access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or caretakers.
- B. **Contact with child.** The GAL shall periodically interview or observe the child who is the subject of the proceeding, with the frequency and duration of contacts and the extent of the relationship established to be based on the child's age and circumstances. However, it is expected that the GAL shall meet with the child at least once in person. All communication and interaction with the child should take into consideration the developmental level of the child.
- C. **Written reports.** The GAL shall make written reports to the court concerning the child's support, parenting, and parental contact. (See Section IV(O).)
- D. **Participation in hearings.** The GAL shall appear and participate in all proceedings for which the duties of a GAL or any issues substantially within a GAL's duties and scope of appointment are to be addressed, and to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, parenting, and parental contact; and
- E. **Additional duties.** The GAL shall perform other duties as directed by the court. When such duties may be in conflict with the GAL role (e.g., providing 'mediation' for the parties), clear reasons for assuming such a role must be provided by the court.

## III. AUTHORITY OF GAL

In order to do the job conscientiously, competently, and without bias, the GAL requires and can expect the following:

- A. **Notice of proposed agreements.** A GAL shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a GAL or the best interests of the child.

- B. **Timely receipt of case documents.** Until discharged by court order, a GAL shall be timely furnished copies of all relevant pleadings, documents, and reports by the party who served or submitted them, and by the Court.
- C. **Access to records.** Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a GAL, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a GAL to inspect and copy any and all records and interview personnel relating to the proceeding for which a GAL is appointed.
- D. **Access to court files.** Within the scope of appointment, a GAL shall have access to all District court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A GAL's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a GAL upon request and without charge.
- E. **Immunity from Liability.** As per MCA 2-9-112(2), a GAL, an agent of the judiciary, is "immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court."

#### IV. **STANDARDS OF CONDUCT FOR GUARDIAN AD LITEM**

Parties and the Court expect the following from the GAL:

- A. **Represent best interests.** A GAL shall represent the best interests of the child for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the child whose interest the GAL represents.
- B. **Conduct thorough investigations.** A GAL should review the child's and parties' social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case; contact and meet with parents, legal guardians, and caretakers of the child; meet separately with the child and each party, unless inappropriate in a particular case; and interview other individuals involved with the child and parties, including school personnel, physicians, mental health professionals, and other collateral contacts, as appropriate. A GAL should also make referrals for or request a court order to mandate psychological, substance abuse, and/or parenting services (e.g., evaluations, counseling, parenting classes, anger management) for one or both parties, when necessary to determine the best interests of the child.
- C. **Inspire confidence in the guardian process.** A GAL shall include parties in the investigation, utilize effective communication techniques, and maintain independence, objectivity and the appearance of fairness in dealings with all parties and professionals, both in and out of the courtroom.

- D. Make defensible recommendations.** Any recommendations regarding the best interest of the child should be appropriate, well-reasoned, and defensible (i.e., backed up by persuasive evidence, documentation, etc.).
- E. Practice within scope of appointment.** An attorney appointed to be a GAL is not the attorney for the child, but rather representing the child's best interests. Therefore, the GAL shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney. The child is not a "client" within the meaning of the Montana Rules of Professional Responsibility.
- F. Exhibit professional conduct.** A GAL shall maintain the highest standards of ethics and professionalism, as set forth in these Guidelines.
- G. Be sensitive to personal differences.** A GAL shall be sensitive to (and not discriminate based upon) issues of race, color, sex, age, religious creed, political views, marital or family status, physical or mental disability, national origin or ancestry, sexual orientation, or socioeconomic status.
- H. Work effectively with other professionals.** A GAL shall collaborate with other professionals involved in the assessment or treatment of the child and/or parties to a child's case and defer, when appropriate, to the professionals' expertise. In the event that a GAL disagrees with a professional's recommendations, the reasons for that disagreement should be well-documented and submitted to the Court for consideration.
- I. Remain qualified for the roster.** Unless excepted by statute or court rule, a GAL shall satisfy all training requirements and continuing education requirements developed for GALs by the Fourth Judicial District Court. A GAL shall promptly advise the court of any grounds for removal or unavailability to serve.
- J. Avoid conflicts of interests.** A GAL shall avoid any actual or apparent conflict of interest or impropriety in the performance of GAL responsibilities. A GAL shall avoid any action or association from which a GAL might directly or indirectly benefit (i.e., for financial or other gain), other than for compensation as GAL. A GAL shall take action immediately to resolve any potential conflict or impropriety, including advising the court and the parties of the potential conflict and action taken to address it, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A GAL shall not accept or maintain appointment if the performance of the duties of GAL may be materially limited by the GAL's responsibilities to another client or a third person, or by the GAL's own interests.
- K. Treat parties with respect.** A GAL is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.
- L. Become informed about the case.** A GAL shall make reasonable efforts to become informed about the facts of the case, and to contact all parties and relevant collateral contacts. A GAL shall examine material information and sources of information, taking into account the positions of the parties.

- M. Make requests for evaluations to court.** A GAL may recommend but shall not require any evaluations or tests of the parties except as authorized by statute or court order issued following notice and opportunity to be heard.
- N. Make requests for other significant recommendations to court.** A GAL shall not require significant changes to the parenting arrangement (e.g., suspension of visits, significant changes in residential schedule) without authorization by the court.
- O. Inform the court of relevant information in a timely and effective manner.** A GAL shall communicate effectively with the Court in reports, recommendations, and testimony. A GAL shall file a written report with the court and the parties as required by law or court order or, in any event, not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the GAL and persons interviewed during the course of the investigation.
- P. Perform other duties in timely manner.** A GAL shall perform all responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies. If a GAL cannot meet a responsibility in a timely manner, the GAL shall inform the Court, request an extension, and notify the parties of the delay.
- Q. Limit duties to those ordered by court.** A guardian ad litem shall comply with the court's instructions as set out in the order appointing a GAL, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a GAL obtains additional instruction, clarification or expansion of the scope of such appointment.
- R. Inform individuals about role in case.** A guardian ad litem shall identify himself or herself as a GAL when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a GAL in the case at the earliest practicable time. A GAL shall advise information sources that the documents and information obtained may become part of court proceedings.
- S. Avoid ex parte communication.** A GAL shall not have ex parte communications concerning the case with the judge(s) and commissioner(s) involved in the matter except as permitted by court rule or by statute.
- T. Maintain privacy of parties.** As an officer of the court, a GAL shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a GAL. A GAL shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety.
- U. Maintain documentation.** A GAL shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the

GAL. Except as prohibited or protected by law, this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

- V. **Keep records of time and expenses.** A GAL shall keep accurate records of the time spent, services rendered, and expenses incurred in each case. A GAL shall file an itemized statement and accounting with the court for each case on a monthly basis (quarterly for inactive cases) and provide a copy to each party or other entity responsible for payment. The Court shall make provisions for fees and expenses pursuant to statute in the Order Appointing GAL or in any subsequent order.

## V. APPLICATION/SCREENING/ELIGIBILITY

- A. **Application Process.** To be placed on the roster of persons eligible for appointment as a GAL, an applicant must submit to a background check (criminal history, child protective services history) and complete the Fourth Judicial District Court *GAL Application Form* (Appendix A) which addresses interest in and qualifications for appointment. Such application shall include:
1. The applicant's social security number;
  2. Education and training applicable to serving as a GAL, including topics and dates of training(s) attended;
  3. Specific areas of expertise or preferences for certain types of cases;
  4. Rate of pay charged to private-pay GAL clients and/or range of fees charged;
  5. Willingness to accept state rate for payment from the Court for services; and
  6. Target number of GAL cases which applicant wishes to carry at any one time.
  7. Prior experience as a GAL (e.g., number of years of GAL or related service, service in other jurisdictions).
- B. **Screening Process.** Each judge and standing master shall screen GAL applicants individually to determine (a) whether they meet minimal qualifications to serve as a GAL in the Fourth Judicial District Court, and (b) whether or not they wish to appoint an applicant to a particular case. The Court will establish criteria, which include all requirements of these Guidelines, for appointment and removal of GALs.
- C. **Eligibility/Qualifications/Removal.** To be appointed to the roster and to remain eligible for appointment as a GAL, an applicant must meet the following minimum requirements:
1. **Education/Training.** Have an undergraduate or graduate degree in psychology, social work, education, nursing, law, or child-related discipline or have an equivalent combination of training, education or experience;
  2. **Licensure.** Have a current, valid license to practice law in the state of Montana; a current, valid license to practice as a social worker, professional counselor, or psychologist in the state of Montana; or a waiver of this licensure requirement by the Chief Judge;

3. **Prior experience.** 'Shadow' at least one GAL case in the Fourth Judicial District (and provide letter from sponsoring GAL), or provide documentation attesting to prior GAL experience in another jurisdiction; and
  4. **Annual report.** Submit a *GAL Annual Update Form* (Appendix B) to the Court that includes:
    - a. GAL-relevant training and education received in the previous year (a minimum of 6 hours);
    - b. Total number of cases (open/closed/inactive/pending) appointed as GAL;
    - c. Certification of continued eligibility to serve as a GAL;
    - d. Number and type of complaints filed against the GAL during the preceding year, and their disposition.
- D. **Appointment to a Particular Case.** When determining a GAL's eligibility for a particular case, the Court will consider (1) the GAL's caseload, (2) the GAL's stated areas of expertise, (3) the GAL's prior experience, (4) the GAL's rate of pay, and (5) the parties' wishes.
- E. **Request to Remove Self from Roster.** A GAL has an affirmative duty to submit a request to the Fourth Judicial District Court to remove his or her name from the GAL list when no longer eligible, willing, or able to serve in that capacity.
- F. **Authority of Chief Judge.** The Chief Judge has the authority to determine whether a GAL is eligible for inclusion on the official roster, and he or she has the authority to remove a GAL from the roster.

## VI. TRAINING

- A. GALs are expected to take advantage of available training opportunities relevant to the role of GAL. Such training might include such topics as: dynamics of domestic abuse and its effect on children; dynamics of divorce and its effect on children; child development; the effects of abuse, neglect and trauma on children; substance use and abuse; mental illness; interviewing techniques; conducting a thorough investigation; ethics in parenting and dissolution cases; legal issues and processes; and the duties and obligations of the GAL as an agent of the court. *(If a GAL has questions about whether a given training opportunity is relevant to the role of GAL, that person can consult with the Court.)*
- B. GALs must file annual reports with the Court listing a minimum of 6 hours of GAL-relevant continuing education attended during the preceding year.
- C. If a GAL fails to complete a minimum of 6 relevant hours of continuing education per year, that person shall not be eligible to serve as a GAL until this continuing education requirement is satisfied and documented for the Court.

## VII. RESPONSIBILITIES OF THE COURT

In order to ensure that only qualified individuals perform the duties of GAL, that the statutes in MCA Title 40-4-205 are adhered to, and that the requirements of these Guidelines are met, the Court shall do the following:

- A. **Order for Costs and Fees.** Pursuant to MCA Title 40-4-205(4), the Court shall enter an order for costs and fees in favor of the child's GAL. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.
- B. **Maintenance of Roster.** The Chief Judge shall maintain a public roster of persons approved for appointment as GAL by the District Court judges or standing masters.
- C. **Establishment of Criteria.** The Court will establish criteria, which include all requirements of these Guidelines, for appointment and removal of GALs and procedures to ensure a reasonable distribution of the work load amongst the GALs on the list.
- D. **Maintenance of Files.** The Court shall maintain files for all applicants and for individuals approved for appointment as GALs by the Court. The files shall contain all records and information required by these Guidelines, and by local rules, for the selection and service of GALs, including satisfactory proof of compliance with training requirements.
- E. **Annual Review.** On an annual basis (in the month of January), every GAL on the roster shall submit to the Court a *GAL Annual Update Form* that includes: (a) the number of active cases in the GAL's caseload, and (b) the GAL's continuing education hours. In addition, every GAL shall submit to the Court any changes to (c) fees charged by the GAL, (d) the GAL's areas of expertise and interest, or (e) the GAL's eligibility to serve as a GAL. The Court shall then appoint or contract with a person to review this information, in addition to (f) the number and type of complaints filed against the GAL during the preceding year. Such review will be to determine that all individuals are in compliance with the training and education requirements of these Guidelines and local rules, that they have performed satisfactorily on all assigned cases during the preceding calendar year, and that they are otherwise qualified to serve.
- F. **Fiduciary Oversight**
  - 1. **Limitations on payment/hours.** Each Order of GAL appointment shall specifically list the payment source and amount to be paid per hour, and include a cap on both the number of hours the GAL may work on the case and the total payment he or she may receive. The Order may include a process for requesting an increase in the number of hours the GAL may serve. A GAL can apply for more hours, if needed, provided that he or she can justify in writing the need for more time.
  - 2. **Itemized statements.** Each year, the Court will review the total payments (both private and state-pay) made to each GAL on the roster. For this purpose, a GAL will submit an itemized statement and accounting with the court for each cases on a monthly basis (quarterly for inactive cases).



## **VIII. GRIEVANCE PROCEDURE/REMOVAL OR SUSPENSION OF GAL FROM PARTICULAR CASE**

### **A. Grievance Procedure.**

1. A party who believes the GAL assigned to a child in that party's case is not complying with these guidelines, including statutory law and applicable Court Orders, may file a grievance with the Fourth Judicial District by completing a *GAL Grievance Form* (Appendix C) outlining the manner in which the party believes that the GAL is not complying with the Guidelines, and filing it with the Chief Judge of the Fourth Judicial District. If requested by the Chief Judge, the party filing the grievance may also provide supporting documents.
2. The Chief Judge may institute a review of a Guardian on his or her own motion.

### **B. Response to Complaint.**

1. The Chief Judge, unless he is the judge presiding in the case, (in which case the matter shall be assigned to the Chief Judge of the preceding year), shall review the complaint and discuss it confidentially, but on the record, with the parties involved. The Chief Judge may dismiss the complaint without further action, or deem that the complaint be reviewed further.
2. If the Chief Judge deems that the complaint should be reviewed further, the Chief Judge shall appoint a review panel to review all pertinent information, including interviews with or written statements from the Guardian, the complainant, parties, counsel and court personnel. The panel shall be comprised of one Guardian who is listed on the roster, one attorney, and one member of the public. (Individuals who serve on the panel will rotate on an annual basis.)
3. If the panel determines the complaint appears to have merit, the Chief Judge shall give the GAL notice and an opportunity to respond to the allegations within 20 days.
4. Following receipt of the GAL response, the Chief Judge may: (1) direct removal of the GAL, (2) dismiss the complaint, or (3) take other appropriate action. A written decision shall be issued to the parties and the GAL.
5. The Court shall maintain a written record in the GAL's file regarding the nature and disposition of any complaint and shall notify the person making the complaint of the disposition.

### **C. Grounds for Removal.** The Chief Judge may remove a GAL from a particular case:

1. In response to a complaint (see above);
2. For failure to comply with a directive of the court, including provisions of the order appointing the GAL;
3. For failure to comply with the responsibilities set forth in these Guidelines;

4. Upon notice of formal sanction of the GAL by any professional or occupational licensing board; or
  5. For other good cause shown.
- D. **Communication with Other Judges.** The Chief Judge shall maintain a docket of all complaints filed concerning the performance of GALs and keep a list of GALs who are removed from cases for failure to comply with the law or these Guidelines and make it available to the other judges.

## IX. DEVIATION FROM GUIDELINES

Under rare circumstances, a GAL may determine a need to diverge from these Guidelines in a significant way. In such case, the GAL should inform the court of the reasons why such deviation feels necessary, and request authorization from the court to diverge from the Guidelines prior to doing so.

## X. APPENDICES (In progress...)

- A. GAL Application Form
- B. GAL Annual Update Form
- C. GAL Grievance Form
- D. GAL "Best Practices" Handbook
- D. FAQ/Brochure for parents ("So you've been assigned a GAL...")
- E. Court Rules, for adoption by the judges
- F. Standard Order Appointing GAL
- G. Sample GAL Report and Recommendations to the Court

*Draft finalized on 12/7/09 by "Guidelines Subcommittee" of Guardian ad Litem Committee Advocating Standards and Education (GAL-CASE): Brenda Desmond, Diana Garrett, Lisa Kauffman, Amy Rubin, and Jennifer Robohm.*